

No. 14/13/87-6Lab./203.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workmen and the management of Secretary, H.S.E.B., Panchkula *versus* Shri Ramesh and others.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

1. Reference No. 333 of 1992:

SHRI RAMESH, S/O SHRI BANWARI, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, H. NO. 134, WEAVERS COLONY, PANIPAT.

2. Reference No. 334 of 1992 :

SHRI SATBIR SINGH, S/O SHRI LAKHI RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, H. NO. 134, WEAVERS COLONY, PANIPAT.

3. Reference No. 338 of 1992 :

SHRI JORA, S/O SHRI HUKAMI, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

4. Reference No. 339 of 1992 :

SHRI DILBAGH SINGH, S/O SHRI PARKASH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

5. Reference No. 340 of 1992 :

SHRI DHARAM PAL, S/O SHRI CHATRU C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

6. Reference No. 341 of 1992 :

SHRI SULTAN SINGH, S/O SHRI BHALLE RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

7. Reference No. 342 of 1992 :

SHRI CHATRA, S/O SORAN, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

8. Reference No. 343 of 1992 :

SHRI GAJE SINGH, S/O SHRI RAM SARUP, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

9. Reference No. 344 of 1992 :

SHRI MALKHAN SINGH, S/O SHRI CHAND, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

10. Reference No. 345 of 1992 :

SHRI RAJBIR SINGH, S/O SHRI SUNEHR, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI, PARISHAD, 134, WEAVERS COLONY, PANIPAT.

11. Reference No. 346 of 1992 :

SHRI SAHIB SINGH, S/O SHRI CHANDGI RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

12. Reference No. 347 of 1992 :

SHRI RAM RATTAN, S/O SHRI MOOL CHAND, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY PANIPAT.

13. Reference No. 348 of 1992 :

SHRI DALBIR, S/O SHRI LAL SINGH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

14. Reference No. 349 of 1992 :

SHRI BISHNU, S/O SHRI BALDEVA, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

15. Reference No. 350 of 1992 :

SHRI RANDHIR SINGH, S/O SHRI DHANPAT, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

16. Reference No. 351 of 1992 :

SHRI RAM PHAL, S/O SHRI MAI RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

17. Reference No. 353 of 1992 :

SHRI SURESH, S/O SHRI SURJIT, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

18. Reference No. 354 of 1992 :

SHRI BALWAN, S/O SHRI LAI SINGH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

19. Reference No. 355 of 1992 :

SHRI SUBE SINGH, S/O SHRI PHAKAR, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

20. Reference No. 356 of 1992 :

SHRI KALI RAM, S/O SHRI NAGINA RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KAKAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

21. Reference No. 357 of 1992 :

SHRI RAJRI, S/O SHRI RATTI RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

22. Reference No. 358 of 1992 :

SHRI SATYAWAN, S/O SHRI CHATTAR SINGH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

23. Reference No. 359 of 1992 :

SHRI MAHENDER SINGH, S/O SHRI CHAND, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

24. Reference No. 360 of 1992 :

SHRI SATYWAN, S/O SHRI HARI CHAND, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

25. Reference No. 361 of 1992 :

SHRI SHIV PAL, S/O SHRI PREET, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

26. Reference No. 362 of 1992 :

SHRI OM PARKASH, S/O SHRI RAM SARUP, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

27. Reference No. 363 of 1992 :

SHRI RAM KALA, S/O SHRI RAKHLA, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

28. Reference No. 364 of 1992 :

SHRI SATISH, S/O SHRI SAHIB SINGH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

29. Reference No. 365 of 1992 :

SHRI RANDHIR SINGH, S/O SHRI BIR SINGH, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

30. Reference No. 367 of 1992 :

SHRI AMAR SINGH, S/O JHANGI RAM, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

31. Reference No. 370 of 1992 :

SHRI MOHINDER SINGH, S/O SHRI SUNDERA, C/O SHRI KARAN SINGH, GENERAL SECRETARY, H.S.E.B., KARAMCHARI PARISHAD, 134, WEAVERS COLONY, PANIPAT.

Versus

1. M/S SECRETARY, HARYANA STATE ELECTRICITY BOARD, SHAKTI BHAWAN, SECTOR-6, PANCHKULA, DISTRICT AMBALA. (2) EXECUTIVE ENGINEER, HARYANA STATE ELECTRICITY BOARD, CIVIL MAINTAINANCE DIVISION, THERMAL, ASSAN, PANIPAT.

Present :

Shri Karan Singh, A.R., for the workmen.

Shri S. S. Sirohi, L.O., for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute between the parties, named above, to this Court for adjudication,—vide Labour Department Notification No. 3/24-3 Lab., dated the 29th October, 1991:—

Whether the termination of services of the above workmen is justified and in order ? If not, to what relief they are entitled ?

2. In all the above said references all over the same facts and the law points is same and hence I decide all the cases by one Award. The original Award be placed in the file of Ramesh bearing Reference No. 333 of 1992.

3. After receipt of the orders of references usual notices were issued to the parties. The workmen appeared and filed their claim-statements, averring that they were working as Sweeper in the maintenance department of Thermal Assan, Panipat, through Shri Kashmiri Lal Contractor w.e.f. 15th June, 1987 and pay of Rs. 500 but their services were terminated on 20th August, 1988. Shri Kashmiri Lal is not a Registered Contractor and the sweeping the work is given permanent work in the Thermal Plant and the management is given Rs. 1,150 to the workmen and the paying of Rs. 500 unfair labour practice. The respondent management admits the workmen/sweepers and admits the giving of contractorship to Kashmiri Lal in Rs. 33,00 and the workmen have produced the Identity Card. The workmen had given the general demand notice that the workmen were not taken on duty on 20th August, 1988 and new persons had been appointed which is against the provisions maintained in section 25-F. So claim petitions are filed.

4. The management appeared and filed the written statement that the petitioners have no *locus standi* to file the present claim petitions against the respondent Board the references are bad in law and is liable to be dismissed; that in-fact that contract was given to Shri Kashmir Singh, Government Contractor for cleaning of the Plant Building for State I & II in Panipat Thermal Power Station. the petitioners were never employed by the respondent Board; that Shri Kashmir Singh is an approved Government Contractor; the contract was given for the first time for one year and after the completion of work, the work has been given to some other Contractors after inviting open tenders the Identity Card had been issued from Security point of view and not the petitioners being the employees of the respondent Board; the petitioners had

given general demand notice on 19th August, 1988 instead of 19th July, 1988 after the expiry of the contract period of the contractor with the respondent Board w.e.f. 15th August, 1988 and hence the claim petitions are liable to be dismissed with costs.

5. Replication was filed. On the pleadings of the parties, the following issues were framed :—

1. Whether the impugned termination of services of the workmen is invalid ? OPW
2. Whether the workmen have no *locus standi* to file the claim statement/petition ? OPM
3. Whether the reference is bad in law ? OPM
4. Relief ?

6. My findings on the above issues are as under :—

Issue No. 1 :

7. The workmen have examined themselves as WW-1 and closed their evidence. The management has examined Shri A. P. Choudhary, Xen., Panipat Thermal Plant as MW-1 and Shri Ratti Ram Kadiya, S.D.O., H.S.E.B. as MW-2 and thereafter closed his evidence.

8. The main question involved in these references are whether the petitioners were the workmen of H.S.E.B. or not. After decision on the point if the workmen petitioners were the workmen of H.S.E.B. it shall be determined whether the petitioners are entitled the relief sought for or not. It is not true that the petitioners were working as Sweepers on the contract basis. The stand of the management is that they were employed by the Contractor Kashmiri Singh and they were not appointed by the H.S.E.B. The case of the workmen is that the management has employed them through Kashmiri Singh Contractor and Kashmiri Singh was asked by Xen. of H.S.E.B. to get the sweepers and the Kashmiri Singh had brought the workers in the management and the management had appointed them as workers.

9. Kashmiri Singh was made a party to the petitioner but he is proceeded *ex parte* as he did not appear. In the reference petition Kashmiri Singh was not a party but in the claim statement and demand notice Shri Kashmiri Singh was made party. The stand of the workmen that the management has objected to joining the party in the claim petition and claim petition is liable to be dismissed. As such the Kashmiri Singh had joined the party in the petition. The question arises whether can any party made any other person party in the claim petition who was not a party in the reference petition and demand notice. This Court received the reference petition from the Labour Commissioner Office and no other person is made a party to the reference petition, if the party makes afterwards becomes illegal. If the party so wishes that could approach the Labour Commissioner or Secretary, Labour Department to make the said person as party and after receiving the said reference the said person could be proceeded and heard the person. As such I do agree with the submission of the learned A.R. for the management as the Kashmiri Singh was not a party in reference petition, demand notice and hence it should be presumed that Shri Kashmiri Singh is not a party in the reference petition and which I hold.

10. The question which arises for determination is whether Shri Kashmiri Singh was the licenced contractor or not. Shri Kashmiri Singh was not licenced contractor he could not employ any person on his behalf but he can be asked to bring the workers. MW-1 Shri A.P. Choudhary could not tell whether Shri Kashmiri Singh was licenced contractor or not. That the workmen have made statements that Shri Kashmiri Singh was not the licenced contractor. It is to be decided whether Shri Kashmiri Singh was the licenced order or unauthorised contractor or not.

11. The workmen have made the statements that they were posted on 15th June, 1987 and their services were terminated on 20th August, 1988. The workmen have alleged in the claim statement that their services are for more than 240 days in a year. The management has not specifically denied the allegations of the workmen that they have served the management for 240 days in a year. Shri A. P. Choudhary, Xen. who appeared as MW-1 made the statement that the workmen were appointed for contract basis. On the other hand the workmen stated they have worked for more than 240 days in a year with the management. Consequently it is held without doubt that the workmen have served for more than 240 days in a year with the management or as the sweeper appointed by Kashmiri Singh. Ex. M-1 is the application made by H.S.E.B. Chandigarh through its Secretary making demand notice demanding the regularisation of 40 employees of the Thermal Plant, Panipat. The list is submitted with the said notice which is Ex. W-1 and which contains the names of the applicant/petitioners.

12. Ex. M-1 is the reply sent by Chief Engineer, H.S.E.B., Panipat to Shri Kashmiri Singh Contractor regarding him tenders against his office enquiry No. 55/PTP/CMD/86-87 opened on 30th January, 1987 and require to execute an agreement for the execution of the work for the period one year with in a maximum period of 30 days of the intimation of acceptance of tender. Ex. M-2

is the photostat copy of letter written by Kashmir Singh to Xen. Civil Maintenance Division, P. T. P. S. Panipat for releasing the payment of "Cleanliness of Main Building stage I & II". It is mentioned that for the bill last month ending 15th March, 1988 (16th February, 1988 to 15th March, 1988) has not been paid to me so far. The payment may be got released at the earliest as the labour is pressing very hard for release of their payment. Ex. M-5 is the photostat copy of the memo sent by Xen. to Chief Engineer regarding surprise checking of sweepers contract labour in P.T.P.S. Service Building. It is mentioned that surprise checking was made on 10th July, 1987 in evening shift and 15th July, 1987 morning shift between 8.00 a. m. to 5.00 p. m. and found that instead of one supervisor, there were two supervisors and as such one No. Sweeping person was less. Out of 26 persons, one sweeper was a minor one, it is also reported that instead of one supervisor, there were two supervisor. 2No. Sweeper appeared to be marginal cases, may be minor or may have attained 17 year age. The workmen had also brought on the record photostat copy of the Secretary, H.S.E.B, Panchkula to General Manager, H.S.E.B, Panipat, L.R. of All Chief Engineers etc. regarding statutory procedure for retrenchment of workmen.

13. The workmen have also brought to my notice the case law of **Gurmeet Singh and others versus Indian Iron Steel Co. Ltd. and others** cited in 1194 Lab. I.C. 45 holding that the petitioners labourers had been initially working under a contractor in Indian Iron and Steel Company, a Govt. of India undertaking. Each of the petitioners was appointed individually by the Contractor. The Company terminated the contract of the contractor and the labourers of the contractor continued to work directly under the management of the company. With the abolition of the contract system, the company introduced the system of direct payment to the petitioner labourers. The petitioners contended that the company was maintaining attendance registers and the petitioners were giving their attendance under the direct supervision of the company was maintaining records of provident fund and the other facilities of the petitioners were entered into Muster Roll Register on that held that the relationship of master and servant or for that matter employer and employee existed between them in the eyes of law. Hence, the company had to treat the petitioners-labourers in that manner.

14. The reference was made to the case of **Hussainbhai versus Alath Factory Tozhilali Union and others** decided by the Hon'ble Supreme Court decided on July 28, 1978, holding that the true test to whether the relationship of master and servant exists is that where a worker or group of worker labourers to produce goods services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers substantially skill and continued employment. The presence of intermediate contractor and whom alone the workers have immediate or direct relationship ex-contractor or no consequence when, on lifting the veil or looking at the factors governing employment, one discerns the truth, though draped in a different perfect arrangement, that the real employer is not the immediate contractor, the Court must be astute to avoid the mischief and achieve the purpose of the management and not be misled by legal appearances in fact between the disowning management and the aggrieved workmen and the employment is in substance and in real life terms by another, the management advertisements connections can not ripen into real employment.

15. On the other hand the learned L.O. for the management made submission that as the workers of the contractor, the management is not responsible for termination of the services of the contractor workmen and had place reliance on reference between Catering Cleaners of Southern Railways, etc. and Union of India and other cited in I.F.L.R. Vol. 54, 1987 page 476 and holding that Central Government had already abolished contract cleaning system—Central Government directed to abolish contract labour cleaning of catering over Southern Railways also. It is also held that the workmen employed by the contractor for cleaning catering in Southern Railway and the Hon'ble Supreme Court held that practice of employment of cleaners through contractors and considered their employment directly by the Railways.

16. The learned L.O. for the management also made reference to **Gain Singh and others versus Senior Regional Manager, Food Corporation of India, Punjab Region, Chandigarh and others** cited in P.L.R. Vol. 99 (1991) 1 and holding that the Central Govt. in exercise of the powers under section 10 of the Act, issued notification prohibiting the employment of contract labour in various godown and depots of the corporation in various states of the country, but in none of the depots in Punjab, the Government has prohibited the employment of the contract labour. In absence of any notification by the Central Government, the Food Corporation of India can employ contract labour in Punjab and the persons so employed would remain in the employees of the contractor and not of the Corporation.

17. For the reasons that the workmen were employed by H.S.E.B. through contractor Kashmiri Lai and which is proved from demand notice made by the workers to the H.S.E.B., Panchkula and Labour Officer-cum-Conciliation Officer and written to Labour Commissioner, Haryana, Chandigarh; Mark 'A' the attendance register copy showing the attendance of the workmen, and in view of the authority laid down in **Gurmeet Singh and others versus Indian Iron Steel Co. Ltd. and others** cited in 1994 Lab. I.C. 45 and in **Hussainbhai versus Alath Factory Tozhilali Union and others** decided by the Hon'ble Supreme Court on July 28, 1978, I have no hesitation in holding that the workmen were employed by the H.S.E.B. through contractor. They had not been approved by the H.S.E.B., why the Deputy Secretary, Labour & Employment have sent the reference petition to this Court for decision. Even Shri A. P. Choudhary, Xen. admitting that the attendance used to mark by Junior Engineer and used to count workers who brought by contractor. When suggestion was made to A.P. Choudhary that the workers were retrenched by the management, Mr. Choudhary made the statement that as the work was over so the workers were laid down.

18. For the above said reasons I hold that the workmen were employed by the management or that the termination of services of the workmen is invalid and I decide this issue in favour of the workmen.

Issue Nos. 2 & 3:

19. These issues are not pressed or argued by the parties. Hence these issues are decided against the management.

Issue No. 4 (Relief) :

20. In view of my findings on the above issues I accept the reference petition and claim petition of the workmen and I hold that the workmen are entitled to be reinstated with continuity of service alongwith 10% back wages. The reference is answered and returned accordingly, with no orders as to costs. A copy of Award are ordered to be placed on all the files except Reference No. 333 of 1992.

The 7th April, 1994.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 1091, dated the 28th April, 1994.

A copy is forwarded to the following :—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Panipat.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/ Labour Court,
Rohtak.

No. 14/13/87-6 Lab./204.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following Award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Engineer-in-Chief, P. W. D. (B. & R.), Haryana, Chandigarh, vs. Shri Dharambir Singh.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 35 of 1993

between

SHRI DHARAMBIR SINGH, S/O SHRI BIRKHA RAM, VILLAGE MUNGAN, DISTT. ROHTAK, WORKMAN

and

THE MANAGEMENT OF M/S. (1) ENGINEER-IN-CHIEF, PWD (B&R), HARYANA, CHANDIGARH.
(2) EXECUTIVE ENGINEER, P.W.D. (B&R), PROVINCIAL DIVISION NO. 1, ROHTAK.

Present :

Shri V. S. Singal, A. R. for the workman

None for the management (*ex parte*)

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana has referred the following dispute between the parties, named above, to this Court for adjudication,—vide Labour Department Endstt. No. SOV/Roh/3-93/8513 -19, dated 3rd March, 1993:—

Whether the termination of services of Shri Dharambir Singh is justified and in order? If not, to what relief he is entitled?

2. After receipt of the reference order from the Government, the usual notices were issued to the parties. The workman appeared and filed the claim statement that he was working with the employer since 1st January, 1990 as Driver on daily wages and has not given any chance of complaint during his service period. The management terminated his services on 1st July, 1992 without assigning any reason or reasonable cause even when the workman and conduct of the workman was satisfactory. The workman has completed more than 240 days of service in twelve calendar months, therefore, the workman is entitled to be heard before giving any sort of punishment to him. Such type of termination also amounts to unfair labour practice. Therefore, the above said termination is absolutely illegal, unwarranted, unconstitutional arbitrary and against the principles of natural justice, the case of the workman is that the at time of termination no notice was given to the workman, no enquiry was held by the management, no chargesheet issued, no seniority list was displaced at the time of termination, no notice was sent to the Government on the prescribed form, no retrenchment compensation was paid to the workman and therefore, the management have contravened Section 25-F of the I.D. Act, and mandatory provisions of Chapter V-A of the I.D. Act, that the management has also appointed some other persons in place of the workman on the same post on which the workman was working. The management have not adopted the mandatory procedure of last come first go, therefore, the management have contravened Section 25-G, 25-H and 25-N of the I.D. Act hence this claim statement filed that he is liable to be reinstated with full back wages along with continuity of service and also along with other resultant benefits.

3. Shri Azad Singh, S.D.C. for respondent No. 1 & 2 appeared on 15th May, 1993 and on 20th July, 1993, Shri Dilbagh Singh appeared for the management and thereafter none appeared on behalf of the management and therefore, the management, was proceeded against *ex parte* on 26th August, 1993.

4. In *ex parte* evidence the workman come into witness box as WW-1 and closed his evidence.

5. From the statement of the workman it is proved that the workman posted on 1st January, 1990 and he was removed from the job on 1st July, 1992 without compliance with the Section 25-F of the I.D. Act, as he served for more than 240 days in 12 calendar months and hence the termination order of the workman is illegal and liable to be set aside. From above said reason I hold that the workman is entitled to be reinstated with continuity of service but with 10% back wages. The reference is answered and returned accordingly, with no orders as to costs.

P. L. KHANDUJA,

Dated 24th March, 1994.

Presiding Officer,
Industrial Tribunal,
Labour Court, Rohtak.

Endorsement No. 1030 Dated, 18th April, 1994

A copy is forwarded to the following:—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Rohtak.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./205.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar respect of the dispute between the workman and the management of M/S Director Central State Farm, Hisar *Versus* Sh. Satbir Singh :—

BEFORE SHRI B.R. VOHARA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 419 of 90

Date of receipt : 30-7-88

Date of decision : 2-5-94

SATBIR SINGH S/O INDER RAJ SINGH, V.P.O. THASKA, DISTT, HISSAR

.. Applicant

Versus

DIRECTOR, CENTRAL STATE FARM, HISAR.

.. Respondent mgt.

Present :—

Shri Darshan Singh for the workman.
Shri O.P. Jain for management.

AWARD (PART-II)

Satbir Singh, above mentioned workman was employed as daily paid worker in May, 1980 in the Central State Farm, Hisar. He was served with a charge sheet on 19th August, 1987, containing several charges. The workman submitted reply denying these charges. Domestic enquiry was ordered and the enquiry was conducted by S.P. Singh, Xen, who held the workman guilty of all except one charge, levelled against the workman. The services of the workman were, thereafter, terminated, vide order dated 19th May, 1988. The workman raised an industrial dispute challenging the enquiry conducted against him and served a demand notice, complaining *mala fide*, and the State Govt. referred the following dispute to this Court:

Whether termination of services of Satbir Singh is justified and in order? If not, to what relief is he entitled?

2. The workman submitted his claim statement and it was pleaded therein that as he had filed a case for equal pay under the Payment of Wages Act, 1936, the management pressurised him to withdraw that case and on his refusal to do so, false charges were framed against him. It was also stated by him that his services were terminated on account of his having taken part actively in trade union activities.

3. The management, in its written statement, on the other hand, pleaded that on the basis of the proved charges against the workman his services were rightly terminated with effect from 19th May, 1988. The other allegations of *mala fide* as mentioned in the claim statement were denied, though it is admitted that a case for equal pay was filed by the workman under Payment of Wages Act. Several preliminary objections were also raised by the management as they are reflected in the following issues framed on 30th May, 1989 by the then Presiding Officer, Labour Court, Rohtak :-

1. As per reference.
2. Whether the domestic enquiry held by the management is fair and proper?
3. Whether the reference is bad in law, as pleaded?
4. Whether the reference is barred by time? If so, to what effect?

4. Issue No. 2 was treated as preliminary issued,—vide my award dated 7th February, 1994, the preliminary issue was answered against the management and it was held that the domestic enquiry conducted in this case, was not proper and fair. The management was granted opportunity to lead independent evidence to prove the charges against the management on the basis of an application dated 6th January, 1994 filed by the management.

5. The management had led independent evidence to prove the charges against the workman. The workman had also led rebuttal evidence. I have heard Shri Darshan Singh for the workman and Shri O.P. Jain, A.R. of the management and have gone through the case file. My findings on remaining issues are as under :-

Issue No. 1 :

6. The management examined seven witnesses to prove various charges leading to misconduct of the workman and the first witness examined in this connection was R. G. Verma, MW-1. According to him on 26th February, 1987, the workman was on duty at Tail Point from 4 P.M. to 12.00 night, but at about 7.30 P.M. on that date, he received a complaint from the contractor that the workman had plucked Ber from the garden given on contract. He stated that he made enquiry from Satbir Singh after visiting him at tail point. He also deposed that the complaints received in this connection were Ex. MW-1/2 and Ex. MW1/3 respectively. The perusal would show that Uttam Chand and Ram Kumar were the alleged eye witnesses to the plucking of Ber by the workman, but they have not been examined before me and as the best evidence has been withheld by the management, the charge of committing theft of ber, while on duty does not stand proved.

7. The other charge against the workman is his alleged refusal to take delivery of letter dated 6th May, 1987 presented to him by Sher Singh and Sher Singh has been examined as MW-6. Sher Singh, who appeared on 6th June, 1991, has stated that when he presented the letter to Satbir, though the letter had gone through the contents thereof, but he refused to accept the said letter. He, however, admitted in his cross-examination that the workman did not abuse him at that time or even on 18th July, 1987, when he again went to deliver a letter to the workman. R.G. Verma, MW-1, has also corroborated the testimony of Sher Singh, MW-6. Nothing has been brought out on this point in the cross-examination of these witnesses and as such charge of refusal to accept official letter on 6th May, 1987 is proved, though the charge of misbehaviour is not proved.

8. According to R.G. Verma, MW-1, on 8th May, 1987, the workman was on duty in nursery area from 4.00 p.m. to 12.00 night, but he was found loitering in office area at 4.15 P.M. It has come in cross-examination of R.G. Verma, MW-1 that nursery was situated behind the house of Director and he has also explained that nursery was situated at a distance of 500 yards from the office. This charge of absence from duty from nursery, therefore, stands established.

9. The next set of evidence consists of testimony of S. R. Gupta, MW-7 and S.C. Sharma, MW-4. They have deposed about the manhandling of S.C. Sharma, MW-4 on 30th August, 1987, when S. C. Sharma was returning on a scooter with S.R. Gupta, as a pillion rider. According to these witnesses, the scooter driven by S.C.Sharma was stopped by the workman and others, who were standing on the way and after placing a chadder on the person of S.C. Sharma, he was giving beatings by the workman and others. Shri Darshan Singh, A.R. of the workman contended that as admitted by S.R. Gupta, MW-7, the scooter was at a speed of 30 K.M. per hour and as such, it was not possible to stop the scooter. This argument of A.R. of the workman is untenable, because S.C. Sharma, MW-4 in his cross-examination has explained that his scooter was got stopped after the workman and other had placed their cycles on the road thereby blocking the road. There is no allegation of enmity against S.C. Sharma or S.R. Gupta and as such, this charge of assault of S.C. Sharma stands established.

10. Shri S.S. Dass Gupta, MW-2 has deposed that on 23rd May, 1987, he had found the workman sleeping while on duty and he testified his report as Ex. M-3 made in this connection. Nothing has been brought out in cross examination of S.S. Dass Gupta to doubt his testimony and as such the charge of the workman found sleeping on 23rd May, 1987 during duty hours, also stands established.

11. The last evidence produced by the management is the testimony of Hari Singh, MW-5. According to him on 18th July, 1987, he put the workman on duty in godown from 8.00 P.M. to 4 A.M. but the workman insisted upon the order of Security Officer and the workman challenged his authority to put him on duty. He has explained in his cross-examination that he had made a report that the workman had refused to accept his order. In the absence of any animus against Hari Singh, this charge of refusal of the workman to obey the order of superior also stands established.

12. In the net result from the above discussion, it stands established that the workman had not only refused to accept the valid orders of his superiors on 6th May, 1987 and 18th July, 1987 respectively, he is also proved to have been found absent from duty on 8th May, 1987 and was also found sleeping on 23rd May, 1987. During duty hours. Above all, the workman had assaulted and beaten S.C. Sharma, Senior Agriculture Assistant, MW-4 on 30th August, 1987 in the company of others. This charge of assaulting and beating a senior officer of the farm is a serious one and in the wake of proved charges cumulatively, the action of the management in terminating the services of the workman can not be said to be disproportionate thereto. I am, therefore, of the opinion that the management was justified in terminating the services of the workman and the workman is not entitled to reinstatement. I hold accordingly. The issue is decided accordingly against the workman.

Issue Nos. 3 and 4:

13. No arguments were addressed by the A.R. of the management on these issues and these issues were contended to by him during arguments. Both these issues are, therefore, decided against the management.

Relief :

14. The services of the workman were terminated,--vide order dated 19th May, 1988. However, the domestic enquiry conducted by the management had already been held to be bad and illegal, and as the guilt of the workman has been proved before this Court for the first time by leading independent evidence by the management, the workman is entitled to wages from 19th May, 1988 till today i.e. the date of this award. In this connection I am supported by the observations made by Hon'ble Supreme Court in GUJARAT STEEL TUBES LTD : ETC *versus* GUJRAT STEEL TUBES MAZDOOR SABHA, AIR '1980-SC-1896. Except the back wages, as stated above, the workman is not entitled to any other relief. The management is directed to pay the amount of back wages for the period from 19th May, 1988 to the date of this award i.e. 2nd May, 1994 with in a period of three months from today, failing which, the workman shall be entitled to interest at the rate of 12% per annum from the date of this award to the date of actual payment. The reference is answered accordingly, with no order as to costs.

The 2nd May, 1994.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endst. No. 1136, dated 3rd May, 1994.

A copy is, forwarded, to the Labour Commissioner, Haryana, Chandigarh for information and necessary action.

B. R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court Hisar.